

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MELINDA LEIGH DAUBENSCHMIDT,**

**Plaintiff,**

**v.**

**Case No. 1:12-cv-1222 JCH/WDS**

**MICHAEL J. ASTRUE, Commissioner of  
Social Security,**

**Defendant.**

**MAGISTRATE JUDGE'S PROPOSED FINDINGS  
AND RECOMMENDED DISPOSITION<sup>1</sup>**

This matter is before the Court on Plaintiff's *Motion to Proceed In Forma Pauperis with Financial Affidavit Pursuant to 28 U.S.C. § 1915* [Doc. 2], filed November 27, 2012 (Motion for IFP). The District Judge referred this matter to the undersigned Magistrate Judge for recommendation. [Doc. 7.] Having considered Plaintiff's affidavit and the relevant law, the Court recommends the Motion for IFP be **DENIED**.

Plaintiff seeks to proceed in this case without paying the filing fee. 28 U.S.C. section 1915 allows a court to authorize the commencement of a civil action "without prepayment of fees or security therefor, by a person who submits an affidavit...that the person is unable to pay such fees or give security therefore." 28 U.S.C. § 1915(a)(1); *Lister v. Dept. of Treasury*, 508 F.3d 1309, 1312 (10th Cir. 2005) (in forma pauperis statute applies to all

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<sup>1</sup>Within fourteen (14) days after a party is served with a copy of these proposed findings and recommendations, that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections to such proposed findings and recommendations. A party must file any objections within the fourteen-day period allowed if that party wants to have appellate review of the findings and recommendations. If no objections are filed, no appellate review will be allowed.

persons applying for IFP status, not just to prisoners). While a litigant need not be “absolutely destitute”, the litigant must show that he cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

Plaintiff’s affidavit states that she is 47 years old, unemployed, married, and has no dependents. [Doc. 2 at 1–2.] Her husband’s total net monthly income is \$3,900. [Id. at 2.] Their monthly expenses total \$3,384, which includes a mortgage payment of \$1,181, a car payment of \$553, utilities, groceries, gasoline, and credit card payments. [Id. at 2–3.] She has no savings or other assets.

Plaintiff’s husband’s monthly income exceeds the couple’s monthly obligations by more than \$500. The Court concludes Plaintiff is able to both pay the filing fee of \$350, and also provide for the necessities of life. Accordingly, the Court recommends the Motion for IFP [Doc. 2] be denied.



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**W. DANIEL SCHNEIDER**  
**UNITED STATES MAGISTRATE JUDGE**